

Appl. No. 09/497,774  
Reply to the Office Action of 05/16/2005

### **REMARKS/ARGUMENTS**

Applicant has studied the Office Action dated May 16, 2005, and submits the following remarks. Reconsideration and further examination of the claims in view of the following remarks are respectfully requested.

#### **Summary of Telephone Interview**

The Applicants wish to thank Examiner LaForgia for granting a telephone interview in this case to discuss the newly cited prior art reference. The interview proved to be helpful in responding to the above-identified Office Action. This telephone interview included a discussion of the differences between the Lumelsky patent and the presently pending claims. These differences are described in detail in the following remarks. In this telephone interview, the Examiner mentioned that the Chadda reference, as applied in an earlier office action, would be a more appropriate reference to cite against the pending claims. The following remarks further address the differences between the Chadda reference and the pending claims, differences which were enhanced by previously amendments that resulted in the Chadda reference being withdrawn and the new Lumelsky reference to be cited.

#### **Claim Rejections - 35 USC § 102**

The Examiner rejected Claims 1-4, 6-14, 17-19, 21-27, 29-33, 35-41, 47 and 48 under 35 U.S.C. § 102(e) as being anticipated by Lumelsky, United States Patent No. 6,377,996. The Examiner cites 35 U.S.C. § 102(e) and a proper rejection requires that a single reference teach (i.e., identically describe) each and every element of the rejected claims as being anticipated by Lumelsky.<sup>1</sup>

To begin, the Applicants point out that the Lumelsky reference is directed to shifting users who are viewing streaming data between different servers so that a particular user

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<sup>1</sup> See MPEP §2131 (Emphasis Added) "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim."

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perceives the streaming data as being continuous and uninterrupted during the shift. Lumelsky, Abstract. This necessarily requires that the various data streams from the multiple servers in Lumelsky to be time synchronized. In contrast to the operation of the system taught by Lumelsky, the presently claimed invention is directed to shifting a load on a server by assembling users who are receiving data into groups and streaming data with different time offsets within the data content to the different groups.

In regards to the rejection of independent claims 1, 25, 33, 41, 47, and 48, the Applicants point out that the pending independent claims define "at least one group" (e.g., as defined in claim 1); or "groups" (e.g., as defined in claim 47). These groups are defined in the various independent claims as, for example, corresponding to a point of transmission of said data flow (e.g., as defined in claim 1); or, in another example, being related to locations in the data flow (e.g., as defined in claim 48). The Office Action also recites that the groups are related locations in the data stream (Office Action dated May 16, 2005, page 3, 4th paragraph). The Applicants traverse the Examiner's assertion that the Lumelsky reference teaches "wherein each respective group for receiving said user requested data in said respective data stream corresponding to a point of transmission of said data flow." (Office Action dated May 16, 2005, page 3, 2<sup>nd</sup> paragraph). The Examiner cited a portion of Lumelsky that teaches identifying points in a data stream that are used to coordinate switching from one server to another. (Lumelsky, Column 3, line 66 to column 4, line 39). The Applicants respectfully assert that the Lumelsky reference does not teach or suggest any type of "groups" as is defined by the currently pending claims.

With further regards to the pending independent claims, the Applicants point out that the various independent claims recite various aspects of realignment of users to different groups. As discussed above, groups are explicitly defined in these claims as being related to location in the data stream in a way that is not taught or suggested by Lumelsky. The Applicants further assert that the Lumelsky reference only discusses shifting users from one server to another and does not include a teaching or suggestion of the realignment of users as is set forth for the presently

The Applicant further asserts that the Office Action dated May 16, 2005, appears to

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analyze all of the five independent claims at once in a way that does not address the differences between these different independent claims. Furthermore, this consolidated treatment of the independent claims recites a portion of claim 1 that does not include the Applicants prior amendment. In the Applicants previous response with amendment submitted December 4, 2004, the Applicants amended claim 1 to recite (with the text added by amendment indicated by underlining):

wherein the server for realigning a respective user from a first respective group corresponding to receiving user requested data at a first location in the respective data stream to a second respective group corresponding to receiving user requested data at a second location in the data stream, the second location being selected by the server, independent of said user requests for data, to change the location in the data stream the respective user is receiving user requested data to any location in the data stream other than the first location in the data stream.

The Examiner's characterization of the teachings of the Lumelsky reference with regards to all of the independent claims includes the above clause without the amended language. The Applicants assert that the claim, as amended, should be given full consideration in this response. Also, as discussed above, the Applicant traverses the Examiner's characterization of the Lumelsky reference and assert that the Lumelsky reference does not teach or suggest the realigning recited for the presently claimed invention.

With regards to the differing limitations included in the various independent claims, the Examiner's above statement of the teachings of Lumelsky appear to be applied to a wide range of limitations. For example, the above appears to be cited as a teaching of the following limitation of independent claim 47:

distributing the user load on the server and shifting the user load toward a steady state load on the server by distributing the groups over a transmission of the data flow by time of data stream transmission or by place in the data flow transmission

The Applicant respectfully asserts that the Lumelsky reference does not teach or suggest the above limitation and that the Examiner has not given full consideration to the above limitation of claim 47 by only considering a limitation of claim 1 that, at best, is only superficially similar. Although the Applicant disagrees with the Examiner's characterization of

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Lumelsky with regards to this limitation, the Applicants assert even that characterization does not include "shifting the user load toward a steady state ... by distributing the groups over a transmission flow ..." as is recited by claim 47. The Applicants further point out that independent claim 25 further includes a limitation including "shifting said user load toward a steady state load on the server by distributing said respective groups over the transmission of said data flow by time of data stream transmission or by place in said data flow transmission." The Applicants assert that Lumelsky does not teach or suggest this "shifting" as is set forth in independent claim 25.

In the above referenced telephone interview, the Examiner indicated that the Chadda reference, as applied in a prior office action, would be a more appropriate reference for the currently pending claims. The Applicants responded, with amendment, in their prior response to distinguish the current claims over Chadda. For the Examiner's convenience, the Applicants reassert their remarks concerning of the differences between Chadda and the presently claimed invention as were made in their response filed December 4, 2004, and incorporate those remarks by reference.

Additionally, Applicants note that dependent claims 2-14, 17-19, 21-24, 26-32, and 34-40 all depend from one of independent claims 1, 25, 33, 41, 47 or 48. As discussed above, the independent claims distinguish over the cited prior art. Since dependent claims include all of the limitations of the independent claims from which they depend, Applicants further assert that dependent claims 2-14, 17-19, 21-24, 26-32, and 34-40 also distinguish over the cited prior art as well. Therefore, Applicants respectfully assert that the Examiner's rejection of claims 1-4, 6-14, 17-19, 21-27, 29-33, 35-41, 47 and 48 under 35 U.S.C. §102(b) as being anticipated by Lumelsky should be withdrawn.

Therefore, in view of the discussion above, Applicants believe that the rejection of Claims 1-14, 17-24, 26-41, and 48, under 35 U.S.C. § 102(e) has been overcome. Applicants respectfully request that the Examiner withdraw the rejection.

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**Claim Rejections - 35 USC § 103(a)**

The Examiner rejected claim 5, 28 and 34 under 35 U.S.C. § 103(a) as being obvious over Lumelsky. In regards to this rejection, the Applicants assert that the Lumelsky reference is disqualified under 35 U.S.C. §103(c) as being commonly owned with the present application.

**PRESENT APPLICATION AND LUMELSKY WERE AND ARE COMMONLY OWNED**

In regards to this rejection, the Applicants assert that the Lumelsky reference is disqualified under 35 U.S.C. §103(c). The Applicants state:

Application 09/497,774 and Patent Number 6,377,996 to Lumelsky were, at the time the invention of Application 09/497,774 was made, owned by International Business machines Corporation, Armonk, NY.

This common ownership is shown by the assignment of application number 09/497,774 to International Business Machines Corporation, recorded at Reel/Frame 010596/0875, and the assignment information on the face of the Lumelsky patent.

**Conclusion**

The foregoing is submitted as full and complete response to the Official Action mailed May 16, 2005, and it is submitted that Claims 1-14, 17-19, 21-41, and 47-48, are in condition for allowance. Reconsideration of the rejection and reexamination are requested. Allowance of Claims 1-14, 17-19, 21-41, and 47-48, is earnestly solicited.

The present application, after entry of this amendment, comprises forty (40) claims, including six (6) independent claims. Applicants have previously paid for forty seven (47) claims, including seven (7) independent claims. Applicants, therefore, believe that an additional fee for claims is currently not due.

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The present application, after entry of this amendment, comprises forty (40) claims, including six (6) independent claims. Applicants have previously paid for forty seven (47) claims, including seven (7) independent claims. Applicants, therefore, believe that an additional fee for claims is currently not due.

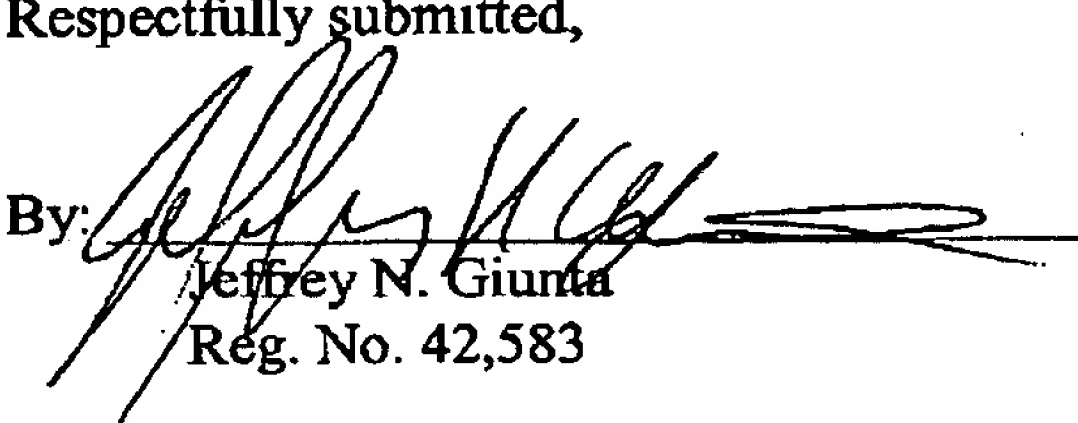
**If the Examiner believes that there are any informalities that can be corrected by Examiner's amendment, or that in any way it would help expedite the prosecution of the patent application, a telephone call to the undersigned at (561) 989-9811 is respectfully solicited.**

In view of the preceding discussion, it is submitted that the claims are in condition for allowance. Reconsideration and allowance of the claims is requested.

Respectfully submitted,

Date: July 18, 2005

By:

  
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